HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 95 (M/S) of 2002

Dhan Prakash S/o Late Sri Rahatu Lal
R/o 22, Hanuman Chowk,
District –Dehradun. .....Petitioner.

Vs

Virendra Kumar Mittal,
S/o Late Lala Rahatu La Mittal,
R/o 6-A (New No. 12)
Swami Vichranand Marg.
District-Dehradun. .....Respondent.

Sri Arvind Vashisth learned counsel for the petitioner.
Sri P.S. Rawat holding brief of Sri P.C. Kandpal
Learned counsel for the respondent.
Sri Nand Prasad learned Standing Counsel for the State.

Dated:- 2-03-2006

Hon'ble B.S. Verma, J.

Heard Sri Arvind Vashisth learned Counsel for the petitioner, Sri P.S. Rawat holding brief of Sri P.C. Kandpal learned counsel for the respondent and Sri Nand Prasad learned Standing counsel for the State.

The present writ petition has been filed by the petitioner with a prayer to issue a writ, order or direction for setting aside the order dated 31-1-2002 passed by the Additional District and Sessions Judge/IIIrd Fast Track Court, Dehradun in Civil Revision No. 174 of 2001 Dhan Prakash Vs. Virendra Kumar and the order dated 11-7-2001 passed by the learned Civil Judge (Senior Division), Dehradun in Original Suit No. 687 of 2000 Virendra Kumar Vs. Dhan Prakash.

By the impugned order dated 11-7-2001, the application 109-C of the petitioner was rejected. Whereby, the petitioner has made a prayer before the Civil judge (Senior Division) that the valuation of the property may be made through the Civil court Amin's, which was rejected. Aggrieved by the impugned order, the petitioner has preferred the revision No. 174/01 Dhan Prakash Vs. Virendra Kumar and the revision was also dismissed. On 19-3-2002, the interim order was passed by this court by which the proceeding of original suit was order to go on but final order

may not be passed. However, the trial court may proceed with a preliminary issue regarding valuation of the suit.

In fact and circumstance of the case, the valuation of he property has to be seen on the basis of evidence adduced by the party at the time while deciding the valuation issue. The learned counsel for the petitioner informed that the valuation issue has not been decided by the trial court. The trial court as well as the revisional court has rejected the application of the petitioner for valuation from court Amin's and there is no illegality or perversity in the impugned order passed by the trial court. The trial court is directed to decide the preliminary issue regarding valuation of the suit on merits after hearing the parties. The interim order dated 19-3-2002 is here by vacated.

With the said observation the writ petition is dismissed.

(B.S. Verma, J.)

Dated: - 2-3-2006

M.K.